

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Renewal Application)	
And Waiver Request of)	
)	
GENE A. SMITH)	File No. 0000364535
)	
For Call Sign KNRT731)	

ORDER

Adopted: July 9, 2002

Released: July 10, 2002

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. Gene A. Smith's (Smith) authorization for station KNRT731 expired on October 31, 2000, pursuant to section 1.955(a)(1) of the Commission's rules, which provides that authorizations automatically terminate on the expiration date specified in the license unless a timely application for renewal is filed.¹ On February 12, 2001, Smith filed the above-captioned application to renew his license for station KNRT731, along with a request for a waiver of the deadline for filing renewal applications.² For the reasons discussed below, we deny Smith's waiver request, and dismiss his renewal application.

2. Pursuant to section 1.925 of the Commission's rules, a waiver request may be granted if it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³ Where a renewal application is filed before the end of thirty days after the license expiration date, a waiver of the filing deadline and the renewal application will be granted as long as the application is otherwise sufficient under Commission rules.⁴ In cases where the renewal application is filed more than thirty days after the license expiration date, the waiver request is subject to stricter review, and also may be accompanied by enforcement action. In determining whether to grant a waiver request filed more than thirty days after the license expiration date, the Commission takes into consideration all of the facts and circumstances involved, including the length in delay of filing, the licensee's performance record, the reasons for the failure to timely file, and the potential consequences to the public if the license were

¹ 47 C.F.R. § 1.955(a)(1).

² 47 C.F.R. § 1.949(a).

³ 47 C.F.R. § 1.925.

⁴ In the Matter of Biennial Regulatory Review-Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

terminated.⁵

3. We deny Smith's request for waiver in connection with the above-captioned application. In this case, Smith filed his renewal application over three months after the license expired. Yet, in his waiver request, Smith does not provide an explanation as to why he was unable to file a renewal application in a timely manner or even what the consequences might be to the public if the waiver is denied. Rather, Smith cites two Branch-level cases granting renewal applications because the stations were timely constructed and operating,⁶ and he contends that grant of his waiver request would be consistent with these decisions. The Branch decisions cited by Smith, however, did not present adequate reasons for granting the renewal applications.⁷ The orders neither describe any facts surrounding the late-filed renewal applications nor discuss how those facts demonstrate unique factual circumstances or public interest reasons supporting their waiver requests. These orders merely state that the stations were timely constructed and are currently operating and this does not provide a sufficient basis to meet the standard for grant of a waiver. We decline to treat orders that provide no analysis required under the Commission's waiver standard as precedent for subsequent cases. It is a well settled principle of administrative law that the fact that an agency made an error in one instance does not require the agency to repeat the error.⁸ We therefore reject Smith's suggestion that we are compelled to grant him similar relief based on the action taken in these cases.⁹

4. Smith also cites *Communications Equipment & Services, Inc.*¹⁰ and *Snider Communications Corp.* to support his argument that prior Commission action requires renewal of his license.¹¹ In both of these cases, however, the petitioners demonstrated unique circumstances supporting license renewal. In *Communications Equipment & Services, Inc.*, the petitioner was granted a waiver partly because it demonstrated that its paging service provided critical community needs and that disruption of that service would deprive its customers of emergency items, such as heating oil and a variety of supplies essential to surviving the severe winter weather in Alaska. In *Snider Communications Corp.*, the petitioner was granted a waiver partly because it demonstrated that it provided service to a variety of public safety agencies, including state and local police, and also numerous charitable organizations. In contrast, Smith has not presented any unusual circumstances, nor has he presented compelling public interest reasons that would justify grant of his waiver request. Further, Smith does not show that termination of service to its customers would leave them without service alternatives or result in loss of a unique service.¹² In fact, Nevada Wireless is the geographic area licensee operating on the

⁵ *ULS MO&O*, 14 FCC Rcd at 11485-86, ¶ 22.

⁶ In the Matter of Ivan Brisbin, *Order*, 15 FCC Rcd 724 (2000); In the Matter of Elliot Acosta, *Order*, 15 FCC Rcd 727 (2000) (same).

⁷ *Id.*

⁸ See *Southeast Telephone, Inc. v. FCC*, No. 99-1164, 1999 WL 1215855 (D.C. Cir. Nov. 24, 1999) (unpublished opinion) (stating that an agency need not repeat in a later case an error made in a prior case); see also Daniel R. Goodman, Receiver; Dr. Robert Chan, *Order*, FCC 01-144, ¶ 5 (rel. May 14, 2001); and Nathan Sherman Enterprises, Inc. et al., *Order*, FCC 01-138, ¶ 6 (rel. May 14, 2001).

⁹ See *Chem-Haulers, Inc. v. ICC*, 565 F.2d 728, 730 (D.C. Cir. 1977); *Texas International Airlines v. CAB*, 458 F.2d 782, 785 (D.C. Cir. 1971) ("Assuming that the Government made a mistake as to (another) in the application of (a) regulation, the law does not require the Government to perpetuate the mistake.").

¹⁰ In the Matter of Notice of Apparent Liability for Forfeiture of Communications Equipment & Services, Inc., *Notice of Apparent Liability for Forfeiture*, 15 FCC Rcd 8444 (1999).

¹¹ In the Matter of Notice of Apparent Liability for Forfeiture of Snider Communications Corp., *Notice of Apparent Liability for Forfeiture*, 14 FCC Rcd 20,047 (1999).

¹² See Peacock's Radio and Wild's Computer Service, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 15016 (2001); Billy Williford d/b/a Jasper Mobil Phone, *Order*, 17 FCC Rcd 477 (2002).

same frequencies in the same area and is available to provide alternative services to Smith's customers.

5. Accordingly, we find that because Smith fails to meet the standard for grant of a waiver, his waiver request is denied. We will, however, grant Smith special temporary authority to operate on the spectrum associated with station KNRT731 for a limited period of time. The Commission may grant special temporary authority upon a showing of extraordinary circumstances requiring operation in the public interest.¹³ We find that it is in the public interest to grant Smith special temporary authority in order to provide Smith with the opportunity to make arrangements to discontinue his operations under Station KNRT731 in an orderly manner. Accordingly, we grant special temporary authority to Smith for a period of 30 days from the date of this Order. If Smith needs additional time to initiate an orderly discontinuance of operations, he can file a request for special temporary authority pursuant to section 1.931 of the Commission's rules for up to an additional 180 days, together with the appropriate filing fee. It is understood that any authority granted based on Smith's request shall be solely for the purpose of allowing Smith to commence an orderly discontinuation of his operations under Station KNRT731.

6. If Smith does not formally request special temporary authority during the 30-day period, Smith will no longer be authorized to provide further service and shall cease any and all operations under Station KNRT731 by the end of the 30-day period. Smith shall notify the Commission that he has stopped operations and shall provide the date upon which his operations ceased, which in no event can be later than 30 days from the date of this Order.

7. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the waiver request filed by Gene A. Smith for Station KNRT731 on February 12, 2001, IS DENIED.

8. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.331, 1.949, and 1.955 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.949, 1.955, the renewal application filed by Gene A. Smith for Station KNRT731 on February 12, 2001, IS DISMISSED.

9. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 303(r), and 309(f) of the Communications Act, as amended, 47 U.S.C. §§ 4(i), 303(r), 309(f), and section 1.931 of the Commission's rules, 47 C.F.R. § 1.931, the Commercial Wireless Division's Licensing and Technical Analysis Branch shall grant special temporary authority to Gene A. Smith to operate Station KNRT731 for a period of 30 days from the release date of this Order to August 8, 2002.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau

¹³ 47 C.F.R. § 1.931(a)(2)(iv).